IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1720 OF 2007

Vinod Chandrakant Kharat & Anr. ..Applicants.

V/s.

The State of Maharashtra ..Respondent.

Mr.Ramrao Adik, Senior Advocate with Ashish Gaikwad for applicants.

Mr.D.P.Adsule, A.P.P. for respondent.

CORAM : J.P.DEVADHAR,

VACATION JUDGE

DATED : 28TH MAY, 2007.

P.C. :-

1. Heard Mr.Ramrao Adik, learned Senior Advocate for the applicants and Mr.Adsule, learned A.P.P. for the State.

2. By this application, the applicants seek anticipatory bail in C.R. No.133/2005 registered with the Baramati City Police Station, Baramati, on 31/10/2005 against the applicants for the offences punishable under section 366(A), 378, 315, 504, 327 347 read with section 34 of the I.P.C.

3. It is not in dispute that the applicant No.1

had filed anticipatory bail applications No.270/2005 and 140/2006 and the same were rejected by the learned Judge of the Sessions Court at Baramati on 20/2/2006 and 6/7/2005 respectively. Similarly, the applicant No.2 had preferred Anticipatory Bail Application No. 267/2005 before the Sessions Court, Baramati and the same was rejected on 3/11/2005. The applicant No.2 had also filed Criminal Misc. Application No.7469/2005 and 3222/2006 before this Court and the same have been withdrawn.

4. As per the complaint lodged by Kum.Rupali Agarkar (prosecutrix), which is registered as C.R.No.133/2005, the applicants committed rape on her continously. In spite of the rejection of the bail applications filed by the applicants from time to time, the applicants evaded arrest all these years.

5. On an application filed by the mother of the applicant No.1 seeking custody of Kum.Rupali Agarkar on the ground that her son applicant No.1 is in love with Kum. Rupali and want to marry her, the learned 3rd Jt. J.M.F.C., Baramati while rejecting the said application on 28/2/2007, had directed that Kum.Rupali be kept in the Remand Home, Baramati in the custody of Superintendent, Remand Home, Baramati.

6. On 30/3/2007 the applicants filed Criminal Misc.Application No.75/2007 in the Court of Additional Sessions Judge, Baramati at Baramati seeking anticipatory bail. According to the applicants, the prosecutrix Kum.Rupali has married the applicant No.1 on 24/3/2007 and in view of this change in circumstances, they are entitled to anticipatory bail.

7. By an order dated 23/4/2007 the learned Additional Sessionsd Judge, Baramati, Dist. Pune rejected the said application inter alia on the ground that the applicants have tampered with the prosecutrix and that the applicants had committed the offence before the alleged marriage of the prosecutrix.

8. In the present Anticipatory Bail Application filed on 25/5/2007, it is contended by Mr.Adik, learned Senior Advocate for the applicants that since the prosecutrix who is present in the Court has voluntarily married the applicant No.1 on 24/3/2007, no useful purpose would be served by continuing the investigation and arresting the applicants. The learned counsel submits that since the prosecutrix had love relations with the applicant prior to the incident, the case itself is false and, therefore, the applicants cannot

be implicated in such a situation. Accordingly, Mr.Adik submitted that in view of the changed circumstances, the application be allowed. Learned A.P.P. opposes the application.

9. In this case, the offence allegedly committed by the applicants is that they have raped the prosecutrix when she was a minor. Having failed to secure the anticipatory bail, the applicants evaded arrest for nearly two years and ultimately came up with a case that the said Kum. Rupali was in love with the applicant No.1 and the applicant No.1 wants to marry the prosecutrix. An application was filed through the mother of the applicant No.1 in that behalf and custody of Kum.Rupali was sought. However, as noted earlier, the said application was rejected on 28/2/2007 and Kum. Rupali was sent to Remand Home and kept under the custody of Superintendent, Remand Home, Baramati. On 23/3/2007 the said Kum.Rupali was found to be missing from the Remand Home, Baramati. On the next day, that is on 24/3/2007 the applicant No.1 claims to have married the prosecutrix. It is pertinent to note that the mother of the prosecutrix had filed an application on 3/1/2006 stating that the applicants are trying to abduct the prosecutrix.

10. In backdrop of the facts, it is difficult to believe the case of the applicants that the prosecutrix has voluntarily married to the applicant No.1 on 24/3/2007 especially when the prosecutrix who was in the custody of Superintendent, Remand Home had disappeared from the Remand Home on 23/3/2007 under misterious circumstances. In any event, the alleged marriage of the applicant No.1 with the prosecutrix would not mitigate the offence committed prior to the alleged marriage.

11. I do not find any infirmity in the order passed by the learned Sessions Judge on 23/4/2007 to the effect that the applicants having evaded arrest and having remained underground have tampered with the prosecutrix.

12. In the result, the application for anticipatory bail is rejected.

(J.P.DEVADHAR, J.)